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Spring 2012

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The Legal Minute

A St. Mary's School of Law Student Publication, Volume 3, Spring 2012

St. Mary's LLM Program Students Meet and Greet

By Susan Kilgore, LLM Student
Contributing Writer

On Friday, February 17, 2012, the LLM students of St. Mary's School of Law gathered for their first social event. In keeping with the international spirit of St. Mary's LLM program, the event was held at Turquoise Turkish Grill.

The St. Mary's School of Law LLM Program Co-Directors, Professors Robert Summers and Gary Liu, along with Professor Geary Reamey, Legal Secretary Lupe Valdez, and Sister Grace Walle joined nearly all of the fourteen LLM students. Our current LLM students hail from China, Ethiopia, Germany, Greece, Jordan, Mexico, the Philippines, Slovenia, and the United States. Some worked—or are still working—as prosecutors, criminal defense attorneys, in the regulatory field, in the corporate world, and in private practice.

The LLM (from the Latin term *Legum Magister*) is the Master of Laws. It is a specialized legal degree which may be pursued after obtaining the Juris Doctor degree, or its equivalent from another country. Every LLM student is already a lawyer in his or her home country.

St. Mary's School of Law offers two different types of LLM degrees. For an American student, who has graduated from an American Bar Association (ABA) accredited law school, the LLM is effectively a specialization. A graduate of a foreign law school may earn an LLM degree from an ABA accredited law school, in order to sit for a state bar exam in the United States. Many foreign lawyers, who want to practice in the U.S., pursue an LLM. Instead of getting the U.S. standard three-year J.D., they get the one-year LLM from a U.S. ABA accredited law school.



From left to right: Ari, Fernanda Bonilla, Maria Gonzalez.
Photo by Susan Kilgore



From left to right: Professor Gary Liu (from China), Restem Omer, Professor Robert Summers, Gerry Montefalcon, Patty Zhou (from China).
Photo by Susan Kilgore

For foreign students, St. Mary's School of Law provides an LLM in American Legal Studies. For American students, the LLM program offers a specialization in International and Comparative Law. Both programs require a thesis.

The average time in which to complete an LLM degree is nine to twenty-four months. St. Mary's LLM program requires twenty-four credit hours. Students usually complete the program in two semesters. There are no special LLM classes, so LLM students take the same classes as regular law students.

Get to know your fellow law students who are pursuing their LLM degrees. You will learn something new about studying and practicing law.



From left to right: Dan Aldhmour (from Jordan), Restem Omer (from Ethiopia), Gerry Montefalcon (from the Philippines).
Photo by Susan Kilgore



Susan Kilgore is an LLM student, studying International Law and Alternative Dispute Resolution. Susan attended Tulane University School of Law, in New Orleans, Louisiana. After a career as a trial lawyer with the federal government, she currently works as a municipal prosecutor for the city of Castle Hills.

For more information on St. Mary's LLM Program, visit <http://www.stmarytx.edu/law/index.php?site=stMarysLLMPrograms>

Local High School offers Law Program, preparing students

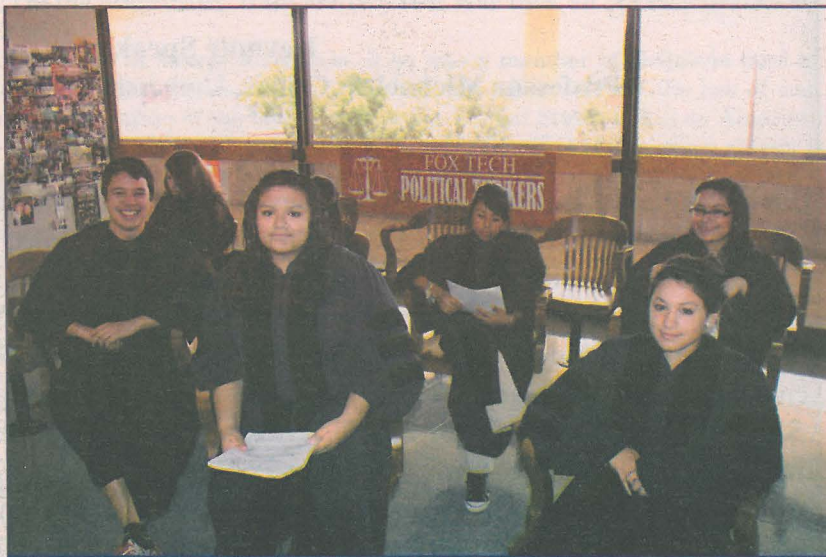
By Gerardo Villegas, Fox Tech Law Magnet High School Student
Contributing Writer

"Without law there can be no freedom, and without justice there can be no law." This quote, printed on a long white paper next to our school's logo, and a scale of justice, sit high on the wall of our law classroom. The quote successfully reminds us of our main objective at this school: law. As a senior in this promising school, I have witnessed the evolution of a program that seeks to empower us, the students, to succeed in the law field.

Besides the abundant knowledge offered, our law magnet has done more than educate the students; from a student perspective, I have noticed a professional growth in my peers. The program, established in 1995, has grown to be one that promises a flow of students who, unlike our apathetic community, are aware of the roots of our system of government and the history of law.

Political science, constitutional law, and criminal law are just some of the classes offered at this school. Our sophomore year, we were introduced to the famous Hammurabi, the lawgiver, along with philosophers whose philosophy and theories highly influenced our founding fathers. That same year we elaborated on constitutional law, the topic that most induced me to seek a career in law. The following year, our curriculum consisted of criminal law; we were given the chance to participate in various mock trials and rigorously learned of the rights of the common citizen in court. This year, our senior year, we have been given the opportunity to network in the legal community of San Antonio by interning in various internship sites. I have been given the opportunity to intern at the San Antonio mayor's office at City Hall. Having experienced this whole process, I can declare that this program is extremely resourceful for disadvantaged students like me; we are given opportunities to surround ourselves with people that can motivate our will to seek a higher education.

The law magnet program is simply a place where students can receive a rigorous college-prep education, while being introduced to all of what law consists. It is important for us, as responsible citizens of this country, to educate ourselves in order to prepare ourselves to be part of this society, and this program does just that.



Back row, left to right: Behka Solomon, Dulce Parra, Shirley Tey;
Front row, left to right: Nick Banda, Kristen Ramiro, Jessica Maltos.
Fox Tech High School for Health and Law Professions,
of the San Antonio Independent School District,
located in downtown San Antonio, at 637 N. Main Avenue.
Photo by Maria White, Administrative Assistant

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If you would like to contribute to
The Legal Minute,
please e-mail thelegalminute@gmail.com.

Thank You.

Notes from the Office of Academic & Student Affairs

Dear Students,

On behalf of the Office of Academic & Student Affairs, I would like to invite each of you to stop by the Raba building, room 106, on the first floor, and see how we can be of help to you while you are in law school. Whether it's in regard to studying for 1L exams, preparing to take the bar examination, finding campus resources you need, or simply wanting some chocolate and a friendly face, our office is here to help you.

The members of our professional staff—Associate Directors Preyal Shah and Kevin Robinowich and I—have long histories with St. Mary's School of Law. Preyal and Kevin are both graduates of St. Mary's and have worked in student support in various capacities for a number of years. I started teaching here in the 1980s and have had the opportunity to work with many of your faculty and administrators. If we don't know something about St. Mary's that you need to find out, we will work with you to get you that information.

Our academic mission for 1Ls is to provide them with the basic skills in order to “think like a lawyer.” Although your professors are always the best source for information, we want to assist you in working through this process. We offer individual academic counseling to get you on track and have many resources, such as books, flashcards, and audio compact discs, which you may check out for two weeks at a time. We also can help you figure out which resource works best for you.

Please come by and see us and let us know how we can help you, and know that we are here to support you!

All the best,
Kathryn Tullos,
Director of the Office of Academic & Student Affairs

In addition to assisting students, Ms. Tullos teaches bar skills classes.

IRAC Tips from the Office of Academic & Student Affairs

1. What is IRAC?
IRAC is an acronym for Issue/Rule/Analysis (or Application)/Conclusion. IRAC describes the four steps that undergird virtually all American legal analysis.
2. When do I use it?
You use it any time that you are applying applicable law to the facts before you. So you will use it in law school on legal writing assignments, exams, and papers. You also will use it as you write memos, briefs, letters, and other legal analyses in practice.
3. What can I do to improve my use of IRAC?
 - a. Remember that the issue is the underlying question of law that you need to address.
 - b. State the rule clearly, and identify it as a rule.
 - c. In your analysis, bear in mind that you need to match up the relevant facts to the rule you identified. Show how the facts in your situation either fit the rule or do not. Just listing facts is not enough. Failing to use facts – ALL of the relevant facts – weakens your analysis. (N.B. If your professor writes “conclusory” or something like that, you are not adequately linking the facts to the law and explaining how those facts lead to your conclusion.)
 - d. The conclusion is usually the shortest part of your IRAC.

If you have questions or want to practice on IRAC, make an appointment with the Office of Academic & Student Affairs in Raba 106.

SCHOLAR SYMPOSIUM 2012

IMMIGRATION LAW: PRACTICE AND POLICY IN THE TWENTY-FIRST CENTURY

Volume Fourteen cordially invites all alumni to the Immigration Symposium on

Friday March 2, 2012.

The focus of the Immigration Symposium will be on the practical aspects of immigration law and the current policy debates that surround the field. Our goal is to provide a strong Continuing Legal Education (CLE) for local practitioners and a strong educational experience for current law students.

The event will take place overlooking downtown San Antonio at the Plaza Club. Registration and fee information can be found on thescholarlawreveiw.org. We hope you will be able to join us for this exciting CLE opportunity.

Keynote Speaker

Professor Michael A. Olivas, University of Houston Law Center

Speakers:

David Armendariz, De Mott, McChesney, Curtright & Armendariz, L.L.P.; **Ramon E. Curial**, Oliva, Saks, Garcia & Curiel, LLP.; **Professor Aaron S. Haas**, Washington and Lee University School of Law, Director of Citizenship and Immigration Clinical Program; **Faye Kolly**, De Mott, McChesney, Curtright & Armendariz, L.L.P.; **Anthony Marshall**, U.S. Citizenship and Immigration Services (USCIS); **Joseph De Mott**, De Mott, McChesney, Curtright & Armendariz, L.L.P.; **Assistant Professor Robert A. Shivers**, St. Mary's University School of Law, Shivers & Shivers; **Professor Lee J. Teran**, St. Mary's University School of Law, Director of Immigration Clinical Program; **Professor L. Darnell Weeden**, Associate Dean, Thurgood Marshall School of Law, Texas Southern University.

POC: Aaron Eckman, Symposium Editor aaroneckman@gmail.com
Francisca Parra, Administrative Secretary fparra1@stmarytx.edu

Schedule of Events

8:30 a.m. Registration & Breakfast

9:00-9:05 a.m. Professor Weeden presents “The Supremacy Clause Preemption Rationale Reasonably Restrains an Individual State Pursuing Its Own Separate but Unequal Immigration Policy”

9:50 a.m. Joseph De Mott presents “The Nuts and Bolts of Family Immigration”

10:30 a.m. Assistant Professor Shivers presents “Employer Sanctions: A New Way to Carry Out a Job Site Raid”

11:15 a.m. Anthony Marshall presents “Military Outreach: Service in the Armed Forces as a Path of Citizenship”

12:00 p.m. Lunch with Keynote Speaker Professor Olivas, who will present “From *Hernandez* to Alabama: Latinos and the Immigration Discourse, 1951-2011”

1:15 p.m. Ramon Curial presents “Employment Based Immigration”

2:00 p.m. Faye Kolly presents “Legal Update: Texas Driver's laws for Temporary Visitors to the U.S.”

2:45 p.m. Professor Haas presents “The Marginalization of Religious Persecution in U.S. Asylum Law”

3:30 p.m. David Armendariz presents “On The Border Patrol And Its Use Of Illegal Roving Patrol Stops”

4:15 p.m. Professor Teran presents “Crime and Admissibility”

At The Plaza Club
100 W. Houston Street
Frost Bank Tower
21st Floor
San Antonio, Texas, 78205

The Symposium is approved by the State Bar of Texas for 6.5 CLE hours, including 1 hour of Ethics.

Book Review

By Lauren Anderson

Editor-in-Chief

The book, *A First-Rate Madness, Uncovering the Links Between Leadership and Mental Illness*, is written by Nassir Ghaemi, a medical doctor and professor of psychiatry at Tufts University School of Medicine. Ghaemi is also the director of the Mood Disorders Program at Tufts Medical Center in Boston. He has degrees in history, philosophy, and public health, and is widely published.

A First-Rate Madness was first brought to my attention by npr.org. I found the topic especially interesting (so interesting that I couldn't wait for it to come out in paperback and paid for the hardcover), because, like most people who look up to our leaders, I saw figures such as John F. Kennedy, Winston Churchill, Ghandi, Franklin Delano Roosevelt, and Martin Luther King, Jr., as model people--extraordinary, fit, capable, and stable. Though I had heard rumours about all of them in the past, their dark sides are left out of the pedestrian history books, for various reasons.

Ghaemi's book reveals the darker elements of these people's lives, including addiction, depression, mania, and promiscuity, and the book correlates the darker elements to their successes. The author also studies more controversial figures, such as General William Tecumseh Sherman and Adolf Hitler. According to Ghaemi, Sherman's "March to the Sea" came after a few bouts with intense, deep depression, binge drinking, and frequent relocations, and the endeavor was the product of a madman. Hitler, who underwent similar treatments as JFK, never received proper care from his physicians. Ghaemi attributes Hitler's apparent insanity to "a nightmarish mixture of drugs and mania."

Ghaemi examines each figure's symptoms, genetics, course of illness, and treatment. He evaluates each person and studies their abnormalities and how the abnormalities have an explosive effect on one's creativity, realism, empathy, and/or resilience.

The book opens with a quote by Aristotle which relates "melancholy" to "above average [performance] either in philosophy, politics, poetry or the arts." Ghaemi states that the "brief insights" into the truth of life, acquired during swings of mania or depression, remain with the sufferer when he/she is normal, allowing the person to "retain an awareness that makes their perception just different enough to be unusually creative," specifically for the task of problem-solving.

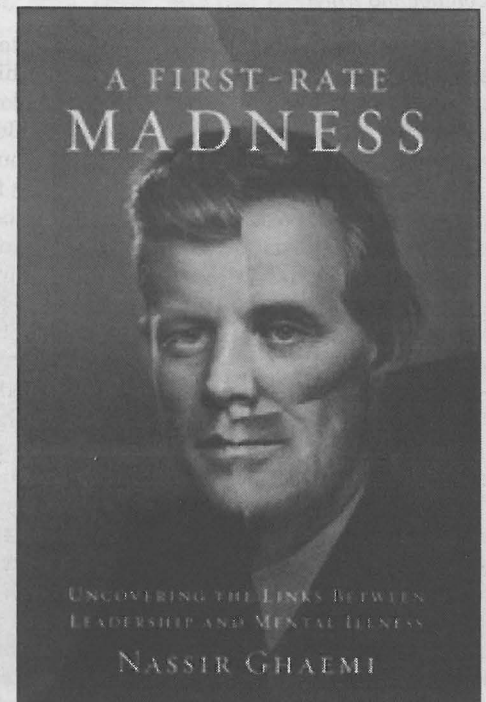
The mental health biographies of these formidable figures expresses Ghaemi's big idea that, in times of crisis, we might need a mad person to lead us. It's a crazy concept, pun intended. Ghaemi explains, that these people have suffered and persevered. They have stared dispair in the face and come out of it alive. They emerged with insight into the ugliness and brutality of life. From it, they gained wisdom and strength.

To further illustrate the concept, Ghaemi examines "homoclite" leaders who have led us through crises, such as George W. Bush, Tony Blair, and Richard Nixon. According to Ghaemi, a "homoclite" is the average person, the majority of people on this planet. They have average ideas, live average lives, come from average backgrounds, and have average goals. People like them, because they are able to relate, and the homoclitites get elected. In times of ease and prosperity, homoclitites do well. But, when peril arises, they falter, due to lack of experience and unfamiliarity with doom and gloom.

Another reason homoclitites are unable to see into the future, to imagine the ramifications of their actions, is because they have unrealistic ideas about themselves and the world in which they live. In a National Public Radio interview with Ghaemi, the author suggested that the average person thinks he/she is more attractive and more intelligent than he/she actually is, and this hubris gets in the way during times of crisis. The decisions they make are unrealistic. The homoclite lacks the realism and creativity which is necessary to overcome the extraordinary obstacle.

Both Abraham Lincoln and General Sherman are discussed as having empathies for both sides of the war. Along with Mahatma Ghandi and Martin Luther King, Jr., they also suffered from severe depression and suicidal tendencies. Today, we admire their feats, yet, one has to wonder why such lofty and noble ideas, such as nonviolence and empathy, are not more commonly practiced? According to Ghaemi, the Black Panther movement, which followed MLK's crusade, promoted "aggressive tactics" to achieve their goals, and it is an example of "how hard empathy is to maintain among the mass of humanity, whose normal psychology prevents them from developing true empathy with other groups even after they have suffered themselves."

Finally, after his thorough examinations, Ghaemi evaluates the current stigma of mental illness, and he encourages us to "be open to some depression [which] may allow us, ultimately, to be less depressed."



If you are having issues with stress, depression, or anxiety, please see the kind people at Student Psychological and Testing Services, behind the Raba building.

Call (210) 436-3135, during regular business hours,

Or if it's an emergency, please call (210) 825-3622, to speak with a counselor on call 24/7 during the academic year.

DEATH OF AL-QA'EDA MEMBER ANWAR AL-AWAKI – A GOOD KILL

By Jeffery Addicott

Professor of Law

The confusion associated with whether the 2011 American "drone" killing in Yemen of al-Qa'eda cleric and leader, Anwar Al-Awlaki, was "legal" or not, reflects very poorly on the political leadership of the United States. It is not because the killing was illegal as some have alleged, it is precisely the opposite. The killing was perfectly legal and yet due to the inability of the Commander in Chief to articulate this fact divorced from political overtones, many in the United States and around the globe accuse America of wrongdoing. Amazingly, not a single voice in the Obama Administration was able to defend our actions as lawful under a simple set of legal parameters. Instead of issuing White House statements associated with the fact that we were "defending" ourselves against a terrorist, the foundational rule of law justification has nothing to do with the fact that Al-Awlaki was a "terrorist" or a bad person. The justification for our lawful use of force against Mr. Al-Awlaki is as follows: (1) we at War with al-Qa'eda (see 2001 Authorization for Use of Military Force); (2) the war rule of law applies to the War, not the domestic criminal law rule of law; (3) the law of war allows us to kill on sight any enemy combatant, detain indefinitely any enemy combatant, or use military commissions when appropriate.

The New York Times editorial page (page 22) of October 4, 2011, carried six letters to the editor on the topic of Al-Awlaki's death. Of those six letters, only one of them understood that the killing was an entirely lawful act carried out under the law of war! All the others reflected varying degrees of confusion that the United States was wrong for not operating under domestic criminal law, was wrong for killing a U.S. citizen, or that the rule of law didn't really matter because Al-Awlaki was a "bad guy" and we have to do what we have to do (the law of the jungle).

With the devastating terror attacks of September 11, 2001, by al-Qa'eda enemy combatants on the United States, terrorism is not just another crime to be investigated by the Federal Bureau of Investigation (FBI) and handed over to an Assistant U.S. Attorney for prosecution. Whatever else the tenth anniversary of the al-Qa'eda terror attacks of September 11, 2001 has signified, it is unfortunate that after the passage of a full decade that there still remains great public confusion when it comes to comprehending fundamental legal concepts associated with how America conducts the War against al-Qa'eda (most often referred to by the phrase "War on Terror"). If the terror attacks are carried out by enemy combatants such as al-Qa'eda, the proper rule of law is the law of war. If the terror attacks are carried out by radicals inspired by radical Islam, then the proper rule of law remains domestic criminal law.

While some may argue that the fault for all this confusion rests with the lack of international consensus on relevant standards that should be adopted to deal with "international terrorism," or that the Bush created phrase War on Terror itself is horribly vague, the root cause of this confusion actually centers around the inability of the United States government to properly distinguish al-Qa'eda enemy combatant terrorists from domestic jihadi terrorists. This confused began in small measures in the Bush Administration but has been magnified to absurd degrees in

the Obama Administration. Obama's ill-conceived attempts to close Guantanamo Bay, stop military commissions, prosecute senior enemy combatants in New York federal district court, and generally refuse to acknowledge to the public that we at in a real "war" with al-Qa'eda have sown mass distortion and consternation about the legality of our actions.

In this light, the "underwear bomber," Abdulmutallab should never have been prosecuted in domestic criminal court by the Obama Administration. Abdulmutallab was trained in a Yemen al-Qa'eda terror camp to blow up a plane over Detroit. Further, he proudly proclaimed at his sentencing in February 2012, that he was honored to be a card carrying member of al-Qa'eda.

The reason that all this matters, is that if the United States is operating under the rule of law associated with domestic criminal law vis-à-vis al-Qa'eda then we have engaged in horrid violations of domestic and international law in the past twelve years, by killing al-Qa'eda members on sight, detaining al-Qa'eda members indefinitely without trial, and using military commissions to prosecute al-Qa'eda members. On the other hand, if we are in a real War then all of these actions are perfectly lawful.

In the case of Anwar Al-Awlaki, if he was a member of al-Qa'eda (and he was), then he qualified for treatment under the full parameters of the law of war. Thus, it is not a violation of the law of war for the United States to kill an American citizen al-Qa'eda member without warning. In addition, if that American citizen is an enemy combatant then we can use the law of war as the proper rule of law to deal with him. While it is true that the 2006 (as well as the updated 2009) Military Commissions Act did exclude American citizen al-Qa'eda members from trial by military commissions, this is a self-imposed rule, not a rule mandated by the law of war. In fact, we prosecuted and executed at least one U.S. citizen serving in the German military in World War II for war crimes.

Finally, the number one threat facing the United States comes from a loose confederation of radicalized violent Islamic jihadists who engage in terrorism. Some qualify as enemy combatants and some do not. Clearly, while all al-Qa'eda enemy combatants can be labeled as "violent jihadists," not all violent jihadists are enemy combatants. In this light, violent jihadists that do not qualify as enemy combatants must be deemed as domestic terrorists, but violent jihadists that do qualify as enemy combatants must be treated under the law of war.

Indeed, out of all of the nascent legal and policy issues associated with the armed conflict against al-Qa'eda, no factor has spawned more debate than correctly applying this separation. The inability to clearly set bright lines of distinction between al-Qa'eda enemy combatants and domestic jihadists is not just a failure in definition, it is a failure in leadership and does tremendous damage to America's commitment to abide by the proper rule of law. America must be able to clearly distinguish between criminals and belligerents and then apply the appropriate rule of law to each category. Not the political nonsense.

To China with Love

By Marion T. D. Lewis, Esq.
Contributing Writer

I had a zillion reasons why going to China would be a bad idea. It didn't help that the person who'd been cyber-stalking me for months had e-mailed on the eve of my trip to say "something bad is going to happen to you soon! We are praying!" I was petrified. But the police assured me that this individual was not a terrorist who would blow up the plane, and that it would be pretty lame for me to pass up a trip to China on account of someone with some issues; so I braved it and went. But, I had grave concerns about the wisdom of flying across the planet with this situation going on. Plus, as everyone knows, I'm the world's most nervous airplane passenger, and I wasn't looking forward to being airborne for fourteen consecutive hours.

Well, suffice to say, the connecting flight from Narita International Airport in Japan to Beijing China was just absolutely horrendous. I was certain that, even assuming the police had been right that the stalker was not going to blow up the plane, that for sure he was doing voodoo chants in an effort to pluck that bird out of the skies and plummet it into the Sea of Japan. That plane gyrated, bounced, dropped, and rattled like a roller coaster from start to finish. OMG. It was as if, at any moment, it would deposit me and the rest of the passengers into the cold Pacific where a shoal of Great White Sharks would feast on our carcasses for months to come. After some time, I found myself saying my last prayers, and asking the Father that, if indeed he was ready to make his introduction, if the stalker had somehow had some insights into this, then at least give me oblivion before I hit the water.

But it worked out. When we landed at Beijing International Airport, it was on the runway, I was in one piece, and there were no sharks in sight. And the trip turned out to be one of the positive highlights of my year at St. Mary's.

I couldn't believe I was in China. A sense of excitement engulfed me from the moment I landed. Beijing International Airport is an enormous hub, like JFK, Heathrow, and Hartsfield Jackson International airports, except everything is written in Chinese. The good thing was that though Chinese calligraphy was everywhere, all signs had English subtitles. So right away, it felt familiar. Plus, luggage carts were free and Dr. Hu was there, as he had promised, to greet me, since, ever the absent-minded globetrotter, I'd neglected to book a flight that was sensitive to local time—and my flight arrived at midnight, China time. Dr. Robert H. Hu was able to converse with the cab driver in Mandarin to get me back to the hotel, so I didn't have to worry that my Chinese was limited to "Ni hao" and "Xie, xie."

I felt like Alice in Wonderland as I peeked from behind the car window on the ride from the airport to the hotel which took us past a slew of high-rise buildings and skyscrapers. Many of these edifices are owned by major U.S. corporations. Actually, everywhere you looked there were signs of Western culture all over Beijing--American culture in particular--from the golden arches of the McDonald's trademark, to imitation coffee shops meant to evoke Starbucks, to Kentucky Fried Chicken fast food joints. That Beijing was not more otherworldly was almost slightly disappointing. It could easily have been a major U.S. city, except for the fact that, not counting us tourists, everybody was Asian.

First Impressions

There is a palpable sense of community and family that permeates the city from dawn to dusk. (And their dawn begins at 4:00 a.m.; that's when the sun rises in Beijing for some insane reason.) Each day, the entire neighborhood is out—all ages, from infants to seniors in their 90s—exercising. Outside the hotel, there is an outdoor public gym, and it was a marvel to see how the whole community came out and worked out together every day--running, playing basketball, doing tai chi, biking, and stretching. Because they obviously put such an emphasis on physical activity, so much so that even their senior citizens are out exercising with their children and grandchildren in a communal setting, it would not be terribly surprising to learn that China's healthcare costs are substantially lower than the U.S.

Some mornings I joined the neighborhood on the tracks for a meditative walk. Yes, I got a lot of stares, and frankly, that's probably because, well, Beijing is not the most racially diverse city in the world, so there aren't that many dark skinned people there. The kids were particularly amused by my presence. They would stare at me, point at me, and giggle uncontrollably. I was starting to take it personally till a little boy approached me one day--he was about seven going on thirty-two and cute as a button—and drawled, in perfect English, "My name is Jake. What is your name?" I was smitten, to say the least. As Renee Zellweger famously said in one of her movies, "he had me at hello." Whenever he saw me after that, he would run to me to say hi and we became buddies.

That said, I must share one observation: I think all that exercise must be how the people in Beijing stay so skinny, because you should see them eat! And their diet is loaded with carbs, from rice, pasta, and dumplings, and with fats, from peanuts and meat. It was de rigueur to see friends hanging out, roadside, eating Chinese food with their requisite chopsticks. Retired men in particular seemed to have a penchant for hanging out with their buddies, playing board games and noshing on exotic dishes with their pals. Yet, in spite of all that eating, with very few exceptions, everyone in Beijing is stick thin. Many of the young women evoked the stereotype of the "China doll" with tiny waists and demure manners. Indeed, even the men have smaller waists than a lot of Western women I know. It is mystifying how they stay so trim, actually. Somebody suggested that the secret is in the tea. They drink a lot of tea (and Ginseng infusions) in China, and apparently, tea is good not just for fertility (China, arguably, is the cradle of fertility of planet Earth with a population of approximately 1.3 billion according to the 2010 Census, despite a one child per family rule, and some believe that the secret to their procreative propensities might lie in their teas, cures, and medicines); It also seems to help to keep fat in check... By the way, if you are a tea lover, the Laoshe Tea House is a first class venue for high tea with entertainment in Beijing. You can't not go...

There was something very "harmonious" about Chinese society, as I saw it. People seemed very contented. Whether this is by design (President Hu Jintao is supposedly trying to create a "harmonious society" in China) or inherent, is unclear. But one thing is for sure, these folks know how to commune with their fellow human beings, meditate, slow down, and enjoy life. I kept wondering, "This is what 'Communism' looks like?" It was all so hypnotic, so relaxing. Maybe that's why I slept a lot while in Beijing, despite dealing with a litany of hate mail from across the Pacific Pond. Or maybe I just never quite got over my jet lag, because most midday afternoons while other students were out sight-seeing at the Forbidden City, the Summer Palace (China's Versailles), the Great Wall, and all the other touristy spots, I snuck away for a nap. I would open the shades just so slightly so that the Beijing sun would peak through the windows, put on a CD filled with Chinese folk music and allow the music and the sun to lull me to sweet, peaceful, harmonious slumber.

Chinese Style

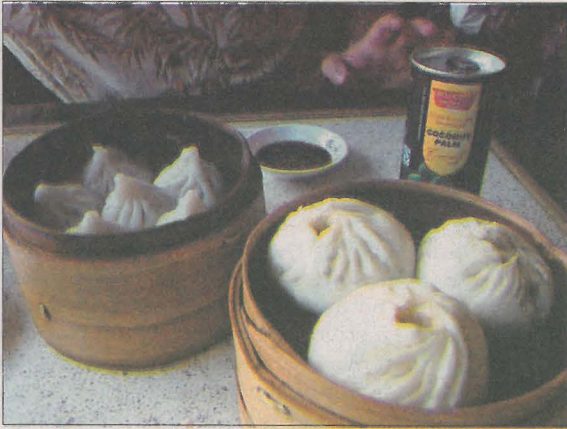
One of the things I absolutely loved about China was the girly fashions proliferating all over the city. It was a total relief because it meant I didn't feel hopelessly old and old-fashioned with all those long, maxi dresses I had packed. The reason I had done that was because one of the professors had said that denim would be hard to launder (washing machines and dryers seem to be a major indulgence in Beijing), and so I had packed mostly long lite dresses that I could hand-wash. The rationale was that not only would they be easier to launder, but dresses would facilitate dealing with the "squatting" situation that occurs each time one makes a trip to the loo. But it turns out that many Chinese women favor long lite dresses, as well. So that worked out--from a fashion perspective, at least. The loo situation is an indelicate subject I won't get into. Suffice to say that in that respect, the way I feel about it is, give me America or pull out my toe nails.

The Dongcheng District in Beijing is a cool neighborhood and is filled with hip stores and trendy eating spots. Walking through the Hutongs of this part of the city is quite a treat, because that is where the "emperors, empresses, and concubines" do their "catwalk." Fashion snobs in the West may say that Beijngians lack the fierce, stop-the-traffic sense of style of the fashionistas in Paris, London, and New York. But I disagree. I think they have a look that is evolving and it wouldn't come as a huge surprise if Beijing becomes a fashion capital within the next decade or so. The Beijing style as I see it (and this is for the girls; guys in Beijing seem to be into fashion as much as guys in any other city, which is to say they could care less) consists of chiffony, frilly, lacy, feminine tops and dresses, girly sandals, elaborate and colorful hair ornaments, delicate jewelry like single strand pearls, skinny jeans, short shorts, and everything and anything that glitters. You almost think they are heading to a casino in Macau after a tough week at the office with all that glittery clothing and those blingy hair ornaments; but, they are not. That's their everyday wear. Oh, and the parasol and straw hat, which invariably come in a rainbow of colors and elaborate edges and designs, are ubiquitous as the sun is intolerably hot in June (although not nearly as hot as San Antonio in August).

Surprisingly, many Chinese women seem to eschew fake designer handbags and watches, even though these items are staples at the Silk Market, where most Westerners go to buy knock-off Rolex, Gucci, Burberry, Hermes, and Louis Vuitton. Instead, they carry simple pocket books by unknown designers, who are also probably Chinese.



From above, clockwise: the of China, the Forbidden City outdoor gym, Summer 2011. Photos by Marion T. D. Lewi



From top left, clockwise: Chinese Dumplings, "the Ubiquitous Parisol," Summer Palace, "Parasols and Hats," Summer 2011. Photos by Marion T. D. Lewis



The Silk Market

The Silk Market is definitely a must visit in Beijing. There is a dizzying array of knock-off merchandise from every conceivable brand name designer there. This shopping Mecca is highlighted in every guide book about Beijing; and, it is quite the tourist trap. If you are not careful, you can blow your travel budget on a lot of trinkets and merchandise that you probably don't even need.

But it sure is fun while you're doing it. You've never seen anything like the Silk Market. It's mayhem: wild, crazy, and fast paced. Anything you imagine that you might want to buy in Beijing, you can get it at the Silk Market--from iPhones, to Nike sneakers, to cultured pearl necklaces, Chanel handbags, and more. You can even get bespoke suits in less than a week. You definitely want to shop till you drop at the Silk Market. But there are two caveats: First, remember that all that glitters is not gold. Second, those Louis Vuitton Moet Hennessey luggage and Hermes bags are not hand-sewn by artisans in the South of France, like the real ones are. They, along with all the other knock-offs, are mass produced on an assembly line somewhere in China. So, the quality is not the same. And you know what? It's not like anybody pretends otherwise. Thus, if when you return home the straps come apart after just two months, it shouldn't come as a huge surprise. It's called caveat emptor.

By the way, don't be too soft-hearted with these venders. They may come off as desperate to make a sale, but it's not because they have no money. Many of these folks are loaded and are only desperate to divest tourists of as much money as they possibly can. They are all about the Yuan, and when it comes to matters involving the Yuan (Renminbi), these folks are way more cunning than the proverbial fox. If they can get away with it, they will even make your change in Russian Ruble (they pulled this with one of my travel peers), so you better double check your bills when you go shopping at the Silk Market or anywhere else in the City, for that matter, so that you don't get ripped off. That said, you definitely can't go to Beijing and not go to the Silk Market. It would be heresy.

Law

From a legal perspective, what goes on at the Silk Market is shocking, to put it mildly. China, as you probably know, accedes to various treaties that protect intellectual property, such as copyrights, patents, trademarks and the like, including, but not limited to the Paris Convention, the Madrid Convention, the Berne Convention, the Madrid Protocols, and TRIPS (Trade Related Aspects of Intellectual Property Rights, which provides in part, "[m]embers shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale"). Indeed, China enjoys bragging rights that it has actually signed many more of these Intellectual Property related treaties and MOUs (Memorandums of Understanding) than the United States has signed. Yet, you walk into the microcosm that is known as the Silk Market and you wonder

what the Dickens is going on? How can boot-legging, counterfeiting and copycatting be so openly on display when China has acceded to all these treaties? Are there no enforcement procedures whatsoever? And if there are enforcement procedures, how come all these merchants get away with so much I.P. infringement? Was signing the treaties merely posturing on China's part? What is even more disconcerting, many young Chinese seem totally unapologetic about this reputation of being "copycats" and "bootleggers." It's almost as if they think this behavior is "pay back" for past wrongs committed against them and, largely, their reaction seems to be that it is Western greed that drives the Chinese bootleg market. In short, if Westerners want the Chinese to stop making knock-off goods, then Westerners should stop buying knock-off goods from the Chinese.

The Chinese paradox

China and the Chinese are complicated, and the Silk Market paradox is only one example of this. It is one of the things that fascinates me, this sense that they have all these layers, that in order to understand them, I would have to be willing to peel back each layer, like an onion, and that maybe all I will get for my troubles are a couple of teary, red eyes. On the surface, they appear to embody the Confucian ideal. They seem modest, unassuming, tranquil, and cooperative (except of course if you have the audacity to go to the Silk Market and insult the salesperson by bargaining like a cheapskate American, in which case you will get cussed out in English, for sure). But what you see is not necessarily what you get. Beneath the exterior are people who are, among other things, extremely proud, relentless, long-suffering, cunning, and tough.

You almost can't blame them for the way they are. Right before the fall of the Qing Dynasty, the Emperor had signed the Treaty of Nanjing, an embarrassingly unfair treaty that left China at the mercy of the British, following the First Opium War. The agreement forced China to cede territory like Hong Kong, to the British, pay indemnity and open their ports to foreign trade, while the British were obligated to do absolutely nothing. Plus, the Chinese didn't even have control of their courts. The Brits did not think them civilized enough to adjudicate matters that might implicate European parties. So China was also subjected to extra-territorial jurisdiction as

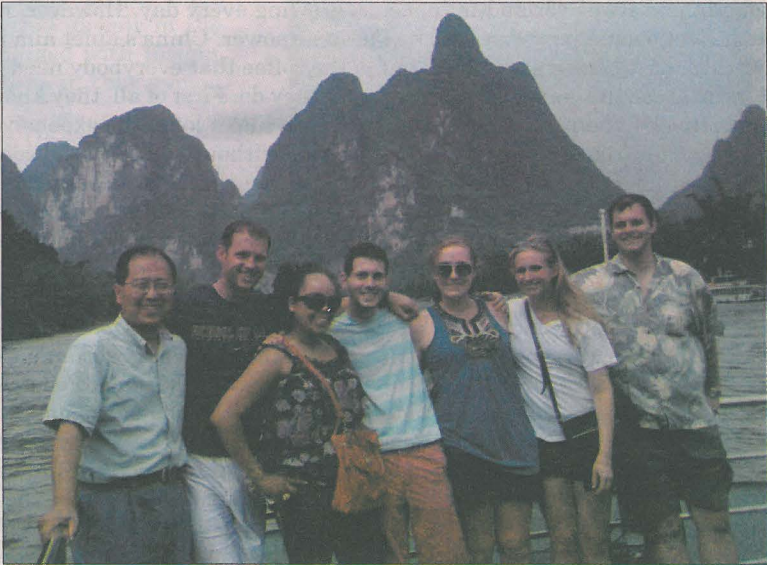
a result of the Treaty, meaning that if there was a legal dispute, a court in England would adjudicate it, rather than a court in China. Professor Chenglin Liu, who taught a course on Chinese legal history, called it "a great humiliation" for China.

Humiliation can be a great motivator, apparently. Nobody knows that better than the people of China. Led by Sun Yatsen, the Chinese people rebelled against dynastic rule in 1911 and toppled the last Qing dynasty. Not long after the demise of Empress Dowager Cixi (the former concubine who ruled from behind the curtain), the last Qing Emperor was forced to abdicate the throne, circa 1912. A great period of chaos and turbulence followed. However, from the Long March to the Great Leap Forward, to the Japanese Invasion, to the Civil War, to the Cultural Revolution and land reform, China and its people have been quietly and unobtrusively making their comeback. It would be a long way from humiliation to redemption and respect. But today, nobody can deny that the Chinese have the attention and respect of the entire world--even if that respect might be grudgingly conceded at times.

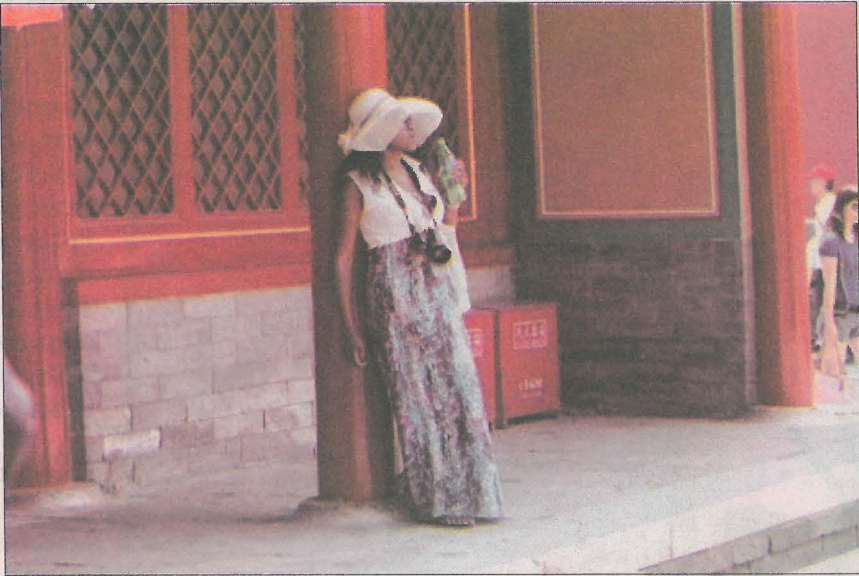
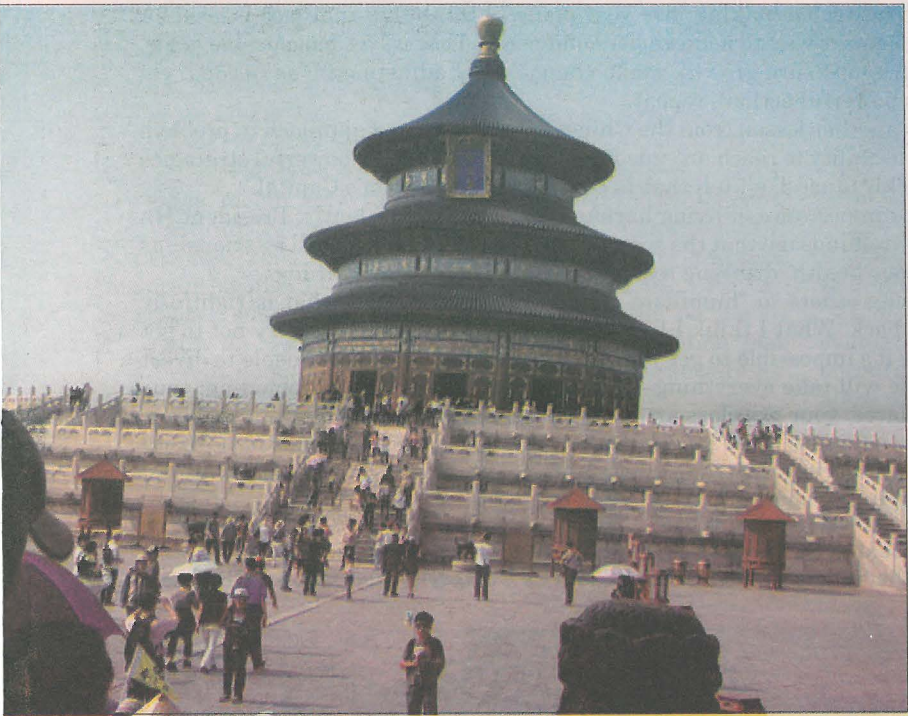
Deng Xiaoping was instrumental in helping China become the economic heavy-hitter it is today, starting in 1978, with his theories of economic/land reforms and modernization. To observe the Chinese from a safe distance, as I often did, is to realize that they have an unspoken pact: We fell together, and we will rise together. Using Dengism, Maoism, Confucianism, and a whole bunch of other "isms," they have literally collectivized their approach to the comeback. As a result, China, in an astonishing short span of time, since 1978, has risen to the second largest economy in the world. In fact, China's economy, which is currently approximately \$5 trillion, is predicted to outpace the United States' economy, currently the number one economy in the world at \$14-\$16 trillion, in about a decade.

How did they do it? They did it collectively, using "five year plans"--a brilliant strategy used by the Communist Party to set goals and achieve economic, social, and cultural growth. But they also did it by stealth. The Chinese didn't exactly take a bull-horn and make threats and promises they couldn't follow through on. Not these people. These folks are like Navy Seals in stealth jets. You don't see them coming. You don't hear them coming. But they are coming and if you are not careful, they are going to take you down. While we in the West laugh at their halting attempts to speak English, and mock them for being copycats and bootleggers, and disdain their legal system, and wink while we think we "exploit" them for the cheap labor they provide our corporations, the Chinese realize that the joke is on us, and they keep working quietly to make sure that when they are done, ALL roads will lead to China.

Hillary Clinton famously asked, "how do you deal toughly with your banker?" when China was accused of manipulating its currencies and engaging in unfair trade. She is right. How do you? If China is a lion, America, right now, is a gazelle; ... continued on page 6



Great Wall, and an
s, Esq.



"Getting Some Shade," Summer 2011.
Photo by Jared Fortenberry

To China with Love, continued...

...and the lion has his teeth in the neck of its prey. China relishes this. But they are too smart to brag. China's secret goal is to make sure that when they reach their apex, they will be the banker of the entire world. Right now, China's economy is described as a "market economy with Chinese characteristics." In a little bit, the world economy will be described in exactly the same way: as a global economy with Chinese characteristics. The trouble is that most people are oblivious. They fail to understand the serious threat China poses to the hegemony of the United States. They pay little attention and revel in a false sense of security and "exceptionalism." This is good for China. It gives China a whole lot of room to pull off the coup. Notwithstanding the economic interdependence of the world, China is very much an economic behemoth, and its power and influence is growing every day. However, make no mistake: China's aim is not to be just a superpower; it is to be *the* superpower. China's quiet aim is to eclipse the United States as the world's most powerful nation. That is the coffee that everybody needs to wake up and smell.

You see this ambition in everything they do. First of all, they know how to pick their battles. They refuse to involve themselves and their resources into a lot of the expensive military skirmishes that other nations seem to relish getting themselves into without thinking the consequences all the way through. This is good for China's bottom line. You also see this ambition in the importance they place on their manufacturing sector. It is by design, not happenstance, that everything is MADE IN CHINA. In addition, the Chinese really value education; there is a discernible discipline in the young people. In addition, you see the ambition in the structure of their government. The Chinese lack, for example, the checks and balances we have come to accept as the norm for how a government should work. China does not have our type of government. China calls itself a "democratic dictatorship." Whatever this patois means (and the jury is out on that question) you are not going to find the Chinese government bogged down by partisan politics and congressional deadlocks when it comes to making governmental policy. Sure, they have a State Council, and they have a National People's Congress, and they have various levels in their government, and so it's not like it's a "rule by man," as it used to be in the days of the Emperors. But at the end of the day, when something has to get done, there will be no bickering about it. The decision will be made and it will be made expeditiously and there will be consensus because that's just how they roll.

We may dismiss this approach as paternalistic, autocratic and undemocratic. We may accuse them of disdainning "individual rights." We may even say they are guilty of "human rights" abuses. Maybe all of the above are true, and maybe the Chinese have some work to do, yet, on several fronts. Still, their form of government and the way the country is run is what has enabled the Chinese people to quickly make up for lost time and catapult China to the second most powerful economy in the world, in less than forty years. Seems to me that something about their system works; it is hardly perfect, but it sure is effective, and maybe we in the West ought to take a look at their playbook, to see if maybe there is something we can learn.

Chinese Lessons

One day, as I was standing on the Great Wall of China, looking over at the mountainous terrain of what used to be Mongolia, I realized that in order to survive, in order to live to fight another day, sometimes you literally need to wall the enemy out as the Chinese did when they built the Great Wall, starting in the 5th Century B.C., to keep out the Mongolians. That is, "if you can't beat 'em, wall 'em out." That's lesson number one.

The other big lesson I learned is the importance of planning and strategizing to accomplish goals. That is exactly what worked for China when they started making "five year plans." I think this approach is good for more than just governments; it is also a smart way to achieve personal goals. That is, set measurable goals, write them down, know your benchmark, measure growth, make changes and adjustments as needed, get everybody on board (collective action is powerful action), repeat.

Speaking of collective action, that's another lesson from the Chinese. A collectivized approach to problem solving, putting aside differences and the ability to reach an expedient consensus are very powerful strategies for turning a bad situation around, quickly. Just don't tell that to the folks in the nation's Capital.

From their way of life, I learned the importance of living harmoniously and benevolently. President Hu Jintao's quest for a "harmonious society" reminds me that the secret to "harmony" is having good relationships with family and friends, maintaining your health, drinking tea, and a host of other simple things.

Finally, there is the issue of allowing others to "humiliate" you by divesting you of what is rightfully yours and being utterly unable to fight back. What I think I learned from the Chinese is, first, try not to get taken to begin with, because sometimes it's impossible to get your stuff back when you allow people to divest you of it. Plus, if you allow them, people will take everything--all your Earthly possessions, including: your home, your land, your country, your palaces, your priceless art, your oil wells, your diamonds, your children, your dignity, your freedom, even your good name. That said, if you do get taken, in spite of your best efforts not to be, don't say a word. That's the Chinese way. Instead, quietly and stealthily plot your comeback....And don't stop till they're on their knees begging for mercy.

Marion T.D. Lewis is a former L.L.M. student at St. Mary's University, studying International and Comparative Law. She visited China in the Summer of 2011 with St. Mary's University Institute for Chinese Law and Business.



“Chairman Mao,” Summer 2011.
Photo by Marion T. D. Lewis



“Inside a Buddhist Temple,” Summer 2011.
Photo by Marion T. D. Lewis



“In my lifetime, there has been nothing comparable to the rise of China on the world stage. I can remember, as a college freshman, watching Nixon and Kissinger during their momentous trip to Peking. ‘Red China’ was a complete unknown. Backward, mysterious, threatening, and evil. Except for collectors

of antiques, no one owned anything that was ‘Made in China.’ Forty years later, everything has changed. Aside from the U.S., China is ‘the’ major player on the world stage. If America is going to have even half a chance prospering in the 21st century, we need to prepare to partner with, and compete against,

the Chinese. It is essential for American lawyers—especially the ones still in law school—to master the intricacies of international law, particularly as it relates to American clients doing business with China. This is where the great job opportunities will be for American lawyers during the next generation.”

Vincent R. Johnson



Yan Zhu (Torts professor at the prestigious Renmin University, in China), Professor Vincent R. Johnson, Professor Chenglin Liu, closing reception of the China Program in Beijing, June 2011.

The Institute on Chinese Law & Business offers invaluable experience, education for a global market

By David Kilgore, 2L
Contributing Writer

I have always been interested in the global aspects of law and business. Right about this time last year I was considering what to do over the summer. I chose to attend the Institute on Chinese law and Business.

My goal after graduation is to work for a business organization. In today's economy, that means a global business. It is pretty much impossible today for any large or medium sized organization not to have international concerns, either in dealing with a foreign supplier or selling into a foreign market. Today, that means China. Whether as a manufacturer of components, a supplier of finished goods, or as a market for finished products, China figures prominently in any discussion involving trade. China also has an increasing presence in Texas and San Antonio. Trade with China has a \$30 billion annual impact on the Texas economy and that is expected to increase as Chinese partners become active in the energy sector in South Texas. San Antonio will soon finalize a Sister City agreement with the city of Wuxi in Jiangsu province, about a two hour drive from Shanghai. The purpose of the Sister City program is to promote and increase understanding, trade, and cultural exchanges between the cities.

China is a young and rapidly evolving legal market. The majority of the international and trade laws that China uses have only been adopted within the last thirty to forty years. Like most of Europe, China is also a Civil Law jurisdiction. Learning Chinese business law, which is heavily influenced by German business law, from a Chinese professor in a Chinese classroom is something that I will remember and apply throughout my legal career. Being in the classroom in the morning, learning and discussing intellectual property law, and then going to the Silk Market in the afternoon to see its real world application was a unique experience, as well.

The faculty of the program is made up of professors and practitioners with a vast array of experiences. Full time faculty from St. Mary's are joined by faculty from the University of Houston, and two top tier Chinese institutions, Beihang University and Renmin University. This year there will also be an adjunct faculty member from the criminal division of the U.S. Attorney's office in San Antonio. Learning from this diverse and distinguished group of faculty, in what is really a seminar setting, is a valuable addition to any legal education.

Another big plus was the cultural exploration that the program offers, and indeed, encourages. While modern China is very much a young and dynamic nation, the Chinese culture and civilization have a rich history dating back thousands of years. Most of us have heard of the Great Wall, the Forbidden City, and the Terracotta Warriors. It is one thing to hear stories or see pictures of these and other places. It is totally different to actually experience them. The program is structured to encourage exploration and travel. Tours of the major sights in and around Beijing are included in the program tuition. This year the schedule is set up with classes Monday through Thursday allowing for three day weekends. A six day break will allow for extended travel around China, or to other countries in the region.

One of last year's group tours was to Shanghai. Shanghai is the business capital of China. It is a very modern metropolitan city that is home to the regional headquarters of many recognized corporate names. Mary Kay Cosmetics, Coca Cola, Dow Chemical, Walt Disney, and Kraft Foods are among the nearly three hundred transnational corporations that have setup regional headquarters in Shanghai. Shanghai has a long history as an international business hub. For many years, a large portion of the city was actually divided into concessions that were granted to France, Great Britain, America, and Japan. The influences of these European and Asian colonial powers can still be seen in the architecture of the city.

As part of the Shanghai trip, students visited the headquarters of Mary Kay (China) Cosmetics Co., LTD. and met with attorneys from the legal resources office. They are the in-house counsel for Mary Kay in the Asia-Pacific region and the only Mary Kay legal office outside Dallas. The legal resources office has a small staff of eight attorneys, one administrative assistant, and three legal interns. Two of the interns were law students at Chinese universities, and I had the privilege of being the first intern from an American law school to work in the Shanghai office. While I was the first American intern in Shanghai, Texas attorneys are well placed in Mary Kay. Nathan Moore, a St. Mary's graduate, is Mary Kay's Chief Legal Officer. The head of the Shanghai office, Wendy Wang, is a graduate of the University of Texas' undergraduate and law school programs.

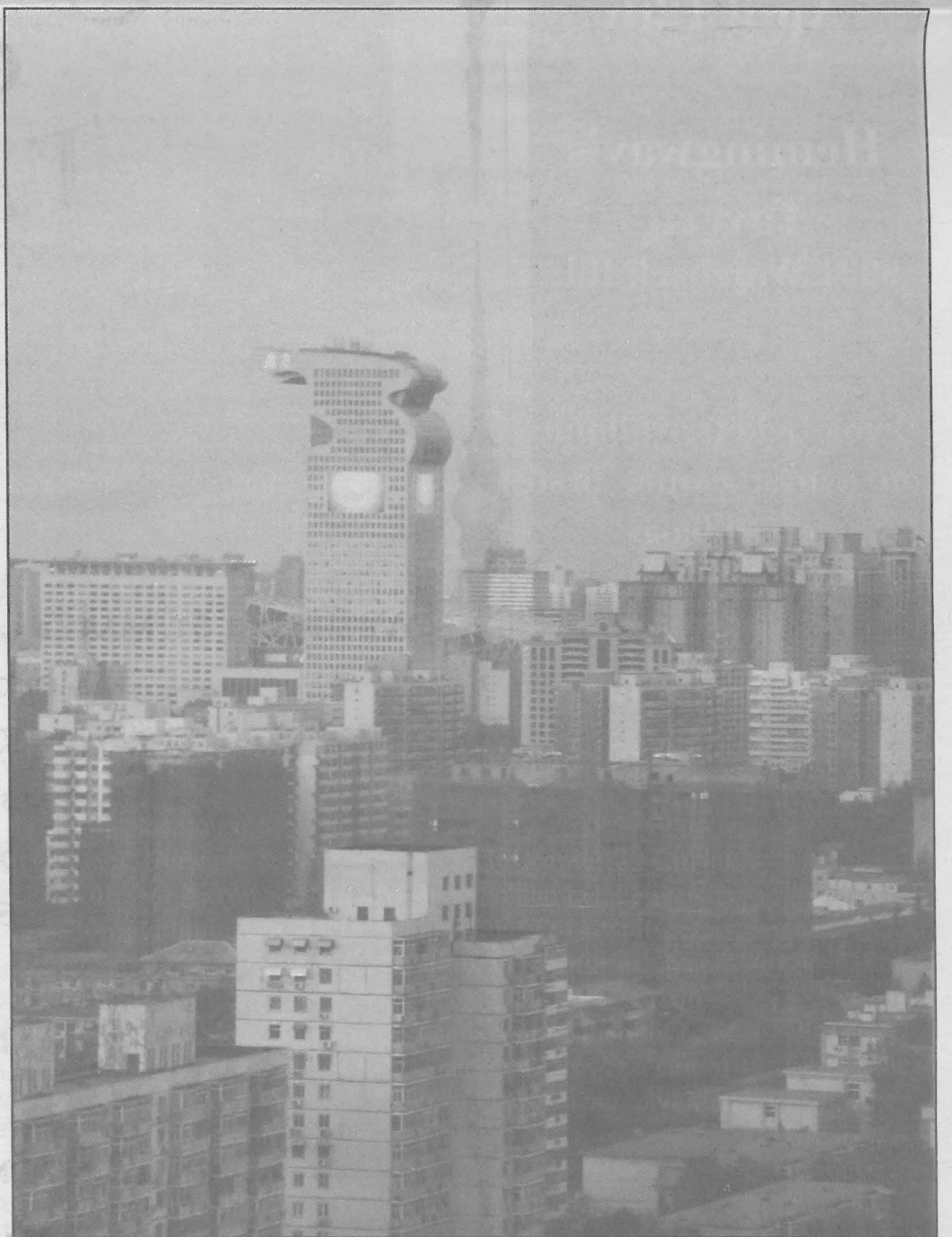
It was an invaluable learning experience to be hands on inside a very small legal office with very large responsibilities. My core assignment for the internship was based in intellectual property, but the assignment actually touched aspects of business operations, human resources, contracts, and vendor relationships. The insight I gained into the role of in-house counsel as a part of the overall business team reinforced to me that my interests lie first and foremost in being an advisor and facilitator, helping the organization as a whole move forward. I will be forever grateful to Wendy and the entire legal resources team for the experience and insight that I gained there.

Mary Kay was not the only internship opportunity available in China. Several students had internships through the program. Some worked with very impressive law firms, and others worked for Non Governmental Organizations and human rights attorneys in Beijing. Some of those internships continued as ongoing relationships once the students returned home.

There are scholarship funds available to help students with the costs. The Strasburger law firm here in San Antonio has set up three \$2,500 scholarships, and Sister Grace Walle has two scholarships available through the China Pioneer fund. If you have an interest in the global aspects of law and business, I encourage you to participate in the Institute on Chinese Law and Business.



Top of stairs: June Lei (Mary Kay Attorney);
From left to right, next row down: Susan Kilgore, Genevieve Adams (New England School of Law), Viola Sun (Mary Kay Secretary to Chief Legal Officer), Bethel Zehaie;
Next row down: Jasmine Brown, Katie Dluhos, Louis Williams;
On 1st step: John Craig, Patrick Garcia;
Front row: Grant Quenstedt, Dan Beniker, Professor Vincent Johnson, Professor Robert Hu, Dan Znidersic (University of Houston Law School), Josh Wilson, David Kilgore;
Main Lobby at Mary Kay Cosmetics Co., LTD, Shanghai, China, June 3, 2011.
Photo by the receptionist



View of the 7 Star Hotel, from the Vision Hotel, 22nd Floor, Beijing, June 2011.
Photo by Susan Kilgore



Cartoon by Ryan O'Toole, concept by Lauren Anderson

The Perils of Property Law

Josephina is out for her afternoon stroll, to clear her head after being locked indoors for the better part of the day studying for law school. She stumbles across Mike the Tiger, who it appears has been rummaging through a trash can and hasn't had a bath in days, maybe even weeks. This creature is in need. "Do I just walk on by and act like nothing happened? Where is his owner? I don't have time to care for this animal... but I can't just let him sit here like this..." So, she takes him home with her and cares for him.

Being the responsible sort, Josephina takes steps to notify the general public of her possession of Mike. A few weeks pass, and eventually, she grows fond of the big cat and he of her.

Mike's owner sees Josephina's notice, and he goes to retrieve Mike.

- A) When Mike's true owner knocks on Josephina's door, Josephina may tell him to get lost and slam the door in his face.
- B) Josephina must return Mike to his rightful owner, despite the time and care she has invested.
- C) Mike gets to choose.
- D) Mike's original owner and Josephina must share joint custody of Mike

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